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Bill Calls for Increased State Role in Trial Court Funding

On November 20, 2001, Organization day of the Indiana General Assembly, Governor O'Bannon's proposed tax restructuring plan was introduced to the Legislature as House Bill 1003.

(HB 1003 can be found at: http://www.in.gov/serv/lsa_billinfo/year=2001&request=getBill&docno=1003.)

Included in the 300-page bill are provisions for the state to assume a substantial portion of trial court funding, commencing January 1, 2003.

Appellate courts in Indiana have been financially supported by the State. However, county governments have incurred most of the net expense of trial courts. While trial court finances are a small part of the entire overall property tax restructuring plan, HB 1003, if enacted, would shift a substantial portion of trial court funding from counties to the state, resulting in a reduction of local property tax levies in the various counties. Trial court operations would then be supported in large measure by statewide income and sales taxes.

Bill-Drafting Task Force

At the Governor's request, members of the judiciary assisted staff from the Governor's office and the Legislative Services Agency in drafting the legislation required to implement that portion of the Governor's plan related to state funding of trial courts. The judiciary contingent was led by Justice Frank Sullivan and included Judge Nancy Vaidik, Indiana Court of Appeals and Vice President of the Indiana Judges Association, Lilia Judson, Executive Director of the Division of State Court Administration, and Senior Judge John Kellam (himself a former president of our Judges Association). In practical terms, the group was charged with drafting legislation which would reduce county property tax levies by approximately \$146 million in 2003 by shifting an equal amount of trial court expenses to the state. (The \$146 million is the O'Bannon Administration's targeted amount of property tax relief attributable to state funding of trial courts.) This task force convened November 1, and completed a fourth and final draft of legislative changes on November 14, in accordance with a deadline set by the Governor.

Summary of Trial Court Funding Component — HB1003

Court Structure and Administration. Current trial court structure and jurisdiction are not affected. Also not affected is current trial court authority "to employ, manage, or fix the salary of ... personnel necessary to transact the business of

the court," to operate a probation department, or to administer the court. These key statutory provisions strongly reaffirm the principle of local judicial management of trial court personnel and operations, consistent with Supreme Court rules. See especially HB 1003, SECS. 237 & 238.

The Supreme Court is assembling committees of trial court judges to recommend policies and procedures for the development, submission, and review of budgets and any personnel or administrative guidelines occasioned by the new funding procedures if adopted. We anticipate these recommendations of trial court judges will be adopted by the Supreme Court as the policies, procedures, and guidelines governing budgets, personnel, and administration under the new system.

Expenses and Revenues

Expenses Shifted to State. In addition to judiciary expenses currently paid by state government, HB 1003 would shift to the state responsibility for payment of salaries and state level fringe benefits of "other" judicial officers, court reporters, bailiffs, court administrators, secretaries, law clerks and other salaried and non-salaried trial court personnel, starting with those authorized by court budgets previously approved for 2002. With stated exceptions, the State would pay operating expenses of all Circuit, Superior, Probate, and County courts. Included in the State pick-up would be the current portions that some counties pay of the salaries of such judicial officers as juvenile magistrates and small claims referees.

Likewise, the state would pay salaries and state level fringe benefits of probation officers and probation staff starting with those authorized by probation department budgets previously approved for FY 2002. The State would pay operating expenses of probation departments. Probation services would remain under the supervision of the courts as they are today.

Included in trial court expenses to be paid by the state are jury per diems, witness fees, medical and psychiatric fees, pro tem fees and lodging and meals of jurors. As a general rule, the state would pay all trial court operating costs that are not specified in the bill to be the responsibility of counties. The fiscal impact of the proposal assumes an inflationary factor for ensuing fiscal years, based upon historical data.

Commission Targets Problems Based on Race and Gender Fairness

The following is Chief Justice Shepard's recent address to the Race & Gender Commission

As our military undertakes to defend the nation, we Hoosiers and all our fellow Americans also hold the keys to defeating the horror unleashed on September 11th.

The triggermen of terror may have thought our reactions would follow one of two paths. We would either cower in fear of external threats or consume ourselves internally by turning against our peace-loving neighbors who merely share a passing cultural resemblance to the terrorist.

Gratefully, we have done neither. America is standing united. Unabashed patriotism has a new lease on life. And while deeply regrettable instances of assaults on innocent people have occurred in Indiana and elsewhere, on the whole, Americans have been remarkably restrained. The nation has come a long way since it interred Japanese-Americans during World War II.

Indeed, a new feeling of connectedness and civility has enveloped our society. Woven into this phenomenon are the threads of how all of us can take part in the war against terrorism. We can help defeat terrorism by showing that prejudice against someone based on the color of their skin, the God they worship, their ethnic background, or their gender is utterly unacceptable.

We make the nation stronger when we stand up against prejudice wherever and however it exists. What caused these individuals to inflict such unspeakable damage on America? In part, it seems, they chose to attack us because America values individual civil rights and embraces the brilliant array of people who have come to our shores or have been born here.

Throughout our country's history, the legal system has been a foundation supporting these ideals. Indiana's judicial system has redoubled its efforts to assure that fair treatment is a centerpiece of our legal system. In 1999, the Supreme Court appointed the Commission on Race and Gender Fairness and asked former Associate Justice Myra C. Selby to organize this broad-based group. She and Judge Ezra H. Friedlander of the Indiana Court of Appeals now lead this 25-member commission, working to improve our state's legal system by identifying and addressing problems based on gender and race.

Commission's Purpose

A few days ago, Justice Selby mentioned to me that recent reports of intolerance clearly demonstrate the importance and

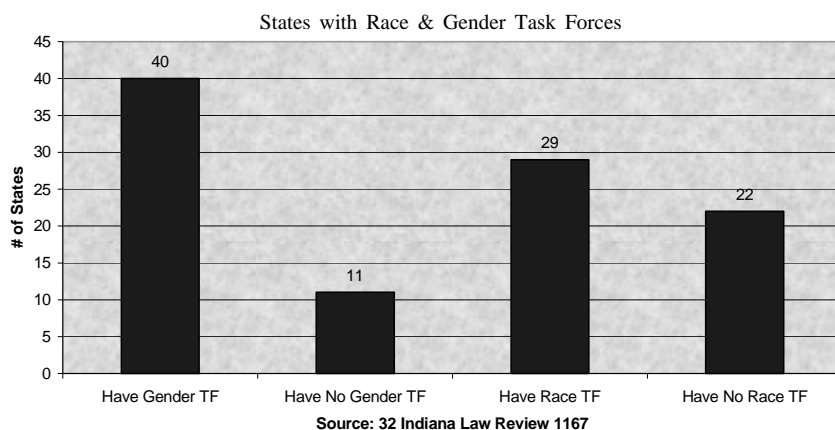
even timeliness of the Commission's tasks. She pointed out the Commission exists to find ways to examine such concerns. Recent events point out that treating people unfairly because they fit a certain stereotype is exactly the kind of prejudice that the Commission was created to address.

Specifically, we have charged our Commission with finding ways to improve race and gender fairness in the courts, legal system, the profession, state and local government, and among public organizations.

To that end, the Commission organized an ambitious schedule of public hearings across Indiana last summer to take the pulse of our communities. The Commission heard many stories about our justice system — some positive and some that were frankly unflattering. A fairly constant undercurrent,

however, was the public's appreciation that we were at least listening.

When the Commission's research is finished, I expect a far-reaching series of recommendations and potential improvements for the Supreme Court to consider.



Other Court Institutions

In the meantime, several Court-based initiatives are underway that will help to build tolerance and respect in our own backyard. The Indiana Conference on Legal Education Opportunity seeks to broaden the kinds of people who enter the legal field in Indiana by helping law students from challenged backgrounds succeed in law school. We do this through specialized education programs, cash assistance, and help with the Indiana Bar Examination.

The Court also works hard to appoint a wide variety of people to its own boards and commissions. We fill openings for law clerks and court staff with an eye toward inclusiveness.

We recognize that our efforts represent a modest, but not insignificant, contribution to the betterment of our society. All of us can help improve the atmosphere of tolerance. In doing so, we all make an effort in the war against terrorism. We cannot leave everything to the soldiers and the diplomats. We can do our part here at home — by acting with respect towards all of our fellow Americans.

Supreme Court Provides Online Legal Research To Indiana Judges

In an historic agreement, the Indiana Supreme Court recently negotiated a contract with Lexis-Nexis to provide online legal research tools to every Indiana judge who presides over a court of record. This research tool will be accessible online using a dial-up connection and a standard Web browser.

In the past, as a result of the local funding of trial court operations, Indiana's trial court judges have had to negotiate such contract independently. This arrangement left each county to fend for itself, and many counties and state agencies have paid hundreds of dollars on a per person basis for such access to electronic legal research. Through its Judicial Technology and Automation Committee (JTAC), the Supreme Court negotiated a flat rate of \$25 per month per user for full Lexis-Nexis access. The Supreme Court pays the cost for each judicial officer. Those who have a current contract with Lexis-Nexis or Westlaw must still comply with the terms of the active contracts, but once that old contracts expire, the Supreme Court program will be available. The \$25 rate is set for

two years, with a renewal clause (at a slightly higher rate) for additional two years.

Furthermore, the contract includes provisions that benefit all governmental units, from local to state agencies. For the same \$25 per month, per person rate, *any* Indiana government unit can obtain Lexis-Nexis access. At press time, over 100 non-judicial units had taken advantage of this offer. Lexis-Nexis has said that Indiana is the first state in the nation that has negotiated such a blanket agreement. For more information on this program please visit the JTAC website at www.IN.gov/judiciary/jtac/programs.html. To arrange a subscription or for more information, contact Mr. Andrew Sopher at Lexis-Nexis: 317-776-3722 or andrew.m.sopher@lexisnexis.com.

Appellate Judges Hear Arguments Statewide

A century ago, Indiana's appellate court judges traveled on horseback throughout the state to hear oral arguments in cases pending before them.

Although appellate court judges now rely on more modern forms of transportation, they continue the tradition of taking the court to the people.

Each year the Indiana Supreme Court and Indiana Court of Appeals travel statewide to hear lawyers argue pending cases, although the courts conduct most oral arguments within their respective courtrooms in the historic State House in Indianapolis. Such travel is intended to increase awareness of the judicial system and, specifically, the work and role of the appellate courts within that system

The Indiana Supreme Court conducted oral arguments in *Northern Indiana Commuter Transportation District v. Chicago Southshore and South Bend Railroad* on October 24, at Valparaiso University Law

School. Indiana's four law schools are a popular venue when the Court schedules arguments outside Indianapolis.

Earlier in October, the Indiana Court of Appeals visited Decatur Central High School to hear arguments in *Ervin Crabtree v. State*, a search and seizure case. The school invited students from nine other high schools from the south side of Indianapolis to attend the argument. The Court of Appeals also has conducted arguments at high schools in Elkhart and Columbus.

The Indiana Supreme Court has installed webcast equipment, which will allow Internet transmission of oral arguments from its Courtroom. While such equipment will increase the number of people who can watch oral arguments, the Court plans to continue conducting oral arguments occasionally outside the State House.

Judicial Qualifications Commission Files Ethics Charges

On September 27, 2001, the Indiana Commission on Judicial Qualifications filed formal disciplinary charges against Judge Douglas Morton of the Fulton Circuit Court.

On September 27, 2001, the Indiana Commission on Judicial Qualifications filed formal disciplinary charges against Judge Douglas Morton of the Fulton Circuit Court.

The Commission charged Judge Morton with violating the Canon in the Code of Judicial Conduct prohibiting ex parte contacts, with violating the rule requiring judges promptly to report ex parte contacts, and with violating the rule, which requires judges to disqualify from proceedings in which their impartiality might reasonably be questioned. The Charges result from a custody dispute entitled Stonger v. Sorrell, Cause No. 52D01-9205-DR-00112. The Commission alleges that Judge Morton discussed the merits of the case with lawyers for Dr. Stonger outside the presence of Ms. Sorrell's attorneys, then instituted a criminal investigation of a key witness, disclosed neither act to the lawyers for Ms. Sorrell until the events were discovered by Ms. Sorrell's attorneys, then denied their request that he disqualify himself from the proceeding. The Supreme Court has appointed a panel of three judges to preside over an evidentiary hearing on the Commission's charges and its request that Judge Morton be disciplined by the Supreme Court for ethical misconduct.

Other Matters

On September 27, 2001, the Indiana Supreme Court issued an opinion In the Matter of James Funke, Jr., Judge of the Jennings Superior Court, Cause No. 40S00-0102-JD-136, in which it approved a settlement agreement between Judge Funke, his lawyer, Dan Byron, (317) 634-7588, and the Qualifications Commission. The Court ordered, as a sanction for ethical misconduct, that Judge Funke be suspended from

judicial office without pay from October 20, 2001 through November 3, 2001. The Qualifications Commission had charged Judge Funke in January 2001 with various violations of the Code of Judicial Conduct resulting from action he took on behalf of pro se litigants in a local dispute with Jennings Northwest Regional Utilities. He also was charged with permitting a practice whereby the clerk of the court and her employees affixed Judge Funke's signature to protective orders as they were filed and before judicial scrutiny, which, in one instance, resulted in his signature appearing on a protective order filed by his own father.

On September 24, 2001, the Indiana Supreme Court issued an order In the Matter of Fredrick R. Spencer, Judge of the Madison Circuit Court, Cause No. 48S00-0102-JD-137, in which it approved a settlement agreement between Judge Spencer, his lawyer, Kevin McGoff, (317) 848-2300, and the Qualifications Commission, and ordered that Judge Spencer is Publicly Reprimanded by the Court. The Qualifications Commission had charged Judge Spencer in January 2001 with violating rules of ethics applicable to judicial candidates after Judge Spencer had run a television campaign advertisement in which he stated he had kept a promise to "send more child molesters to jail...burglars to jail...drug dealers to jail". In issuing the Public Reprimand, the Supreme Court accepted the agreement that Judge Spencer had violated a rule prohibiting candidates from making pledges or promises of conduct in office, from making statements which commit or appear to commit candidates with respect to issues likely to come before the court, and which requires candidates to maintain the dignity appropriate to the judicial office and to act in a manner consistent with the independence of the judiciary.

Former Justice Paul Jasper Dies at 92

Justice Paul G. Jasper, the Court's 80th jurist, died on October 23, 2001.

He served on the Indiana Supreme Court from 1949 until 1953. During his tenure on the Court, he wrote 78 majority opinions. He was elected in 1948 after defeating an incumbent Court member. He was the Court's 80th jurist.

In remembering Justice Jasper, Chief Justice Randall T. Shepard remarked, "Paul Jasper was a remarkable man who served both the Court and the people of Indiana with distinction and class. Many legal observers have described his Court, which included Justices Emmert, Gilkison, Starr and Young, to be one of extremely high caliber, peopled by

outstanding individuals from successful political and legal careers. Judge Jasper certainly fit that billing. He was the soul of civility and grace and I always looked forward to seeing him. Even after he left the Court he continued to be a forceful advocate for improvements to our judicial system. Despite his other responsibilities, he was a regular feature at Court and legal functions. I am going to miss him and I know many other members of our Court family will miss him as well. My colleagues and I would like to express our sincere condolences to his family and friends."

State Fiscal Proposal (continued from page 1)

Revenues Shifted to State. Except where specific sources of revenue are reserved to the counties, trial court generated revenues would be shifted to the state. These include civil and criminal court costs, civil penalties, bond administration fees, adult and juvenile probation user fees collected after January 1, 2003, late surrender fees, jury fees, and funds currently received from city and town courts.

Expenses Remaining With Counties. Counties would continue to provide court facilities, furniture, and equipment and would pay the cost of: operating juvenile detention facilities; community transition programs through probation departments; alcohol and/or drug programs under IC 9-30-9 and 12-23-14; legal representation of indigents; GAL/CASA programs; and other costs where specifically provided by law. Existing state supplemental funding programs such as those for public defenders, community transition, and GAL/CASA would continue.

Counties would continue to be authorized to provide supplements to judicial salaries. Counties would continue to pay the expense of staff and operations for prosecutors, county clerks, and sheriffs.

Revenues Remaining With Counties. While tracking the various fee statutes has been difficult, certain current rev-

enues consisting primarily of dedicated user fees would remain with the counties as designated funds and include: support fees, GAL/CASA fees, supplemental public defender fees, alcohol and drug countermeasures fees, and other user fees which totaled approximately \$8.3 million in 2000.

Fiscal Management

Commencing with the year 2003, each court will submit a budget to the Division of State Court Administration. The Division is required to compile the trial court budgets and to assist the Supreme Court in preparing and submitting a unified court budget to the General Assembly. All salaries which become the obligation of the state would be paid by the state directly. As a result of discussions with the State Budget Director, the legislation includes authority to permit a system of advance block payments from the State Auditor to county treasurers in order to provide trial courts with funds for other operating expenses at the local level.

Conclusion The provisions of HB1003 providing for state funding of local judicial expenses constitute a substantial step toward recognition of the Indiana Judges Association's long-stated goal of a state-funded judiciary. The legislation, as introduced, recognizes the autonomy of our court system by placing in our court system not only the responsibility but also the authority to create and manage our own destiny.

Hendricks County Opens Pro Se Self-Help Center

The Hendricks County courts established one of Indiana's first court based legal self-help centers to help citizens without lawyers negotiate the legal system.

Through the joint efforts of Judge David H. Coleman, Judge Karen M. Love, Judge Robert Freese, County Clerk Sharon Dugan and Prosecuting Attorney Patricia Baldwin, the Hendricks County Court Self-Help Center opened on September 6, 2001. The Hendricks County Commissioners authorized the use of office space for the center on the first floor of the county courthouse near the west door in Danville.

The center will be open Monday through Friday from 8:00 a.m. until 4:00 p.m. It will provide forms, instructions, information and law books that can't be used by citizens involved in civil lawsuits. Initially, small claims forms, protective order forms and simple divorce forms will be available. Danville attorney William Harrington donated a set of West's Indiana Code books for use in the center. Local court rules and State trial rules will also be available.

"Our goal in opening this office is to make sure citizens have as much information as possible about the law and court

process before they come into the courtroom. A party has the burden of proving his or her case whether represented by an attorney or not. A judge is limited in helping a party in court once the trial begins. The Self Help Center will allow litigants to be better prepared for their day in court," Judge Coleman said.

The center cannot offer legal advice. If a person decides to hire an attorney, the self-help center will have information about Hendricks County attorneys including telephone numbers, office hours and the type of cases the attorney handles.

Indiana Chief Justice Randall T. Shepard recently appointed Judge Coleman and Clerk Sharon Dugan to the Indiana Pro Se Advisory Committee. The State committee will advise the Indiana Supreme Court on issues involving litigants without lawyers in the Indiana court system. A web site developed by the committee with family law forms and other information may be found at: www.state.in.us/judiciary.

Supreme Court and Court of Appeals Donate Computers

The Judicial Technology and Automation Committee (JTAC) of the Indiana Supreme Court has been active over the past year in bringing technology to courthouses across the state.

The Indiana Supreme Court Judicial Technology and Automation Committee (JTAC) has been active over the past year in bringing technology to courthouses across the state. In one program, JTAC arranged for computers being replaced at the Supreme Court, Indiana Court of Appeals, and related Supreme Court agencies to be made available to counties that need them. Several counties accepted this offer, and over 150 Pentium-class computers were distributed.

Johnson County received over 50 computers opening many possibilities for upgrades to the courthouse network. According to Court System Administrator Teresa Abney, "The computers have worked out wonderfully. They replaced old IBM 486 machines, and made it possible to install Microsoft's Outlook as the email system to be used on the courthouse's Local Area Network." She added that ten of the computers were being used in two courts and in the clerk's office, while three computers are being used by Community Corrections.

St. Joseph County received 16 computers. In that county, the courts are using the computers for access to the case management system, Quest. Mike Lochmondy, the courts' database coordinator, noted, "these computers are working out great so far. We will be using them for Internet and the Web, of course, and will be setting up a lab of six workstations to train attorneys. We will also be setting up a system of digital photography for detainees, replacing the very expensive Polaroid snapshots previously used."

Finally, Marion County received 19 computers

from JTAC, and plans dramatic advances in computing power for line staff. Deputy Clerk Claudia Cummings said, "these computers will be replacing dumb screen terminals from the 1980s—the old 'green screen' kind. The court plans to use Groupwise for email on the computers, as well as Microsoft Office to allow for advanced office productivity." Ms. Cummings noted that, "the Supreme Court's generosity is very much appreciated in Marion County, as we are very thankful for these computers."

The used computer giveaway should be distinguished from another program JTAC has sponsored. Using a grant from the Indiana Criminal Justice Institute, JTAC has facilitated access to E-mail and the Internet by offering a new computer and one year worth of dial-up Internet access to every judge and county clerk serving an Indiana court of record, if their current computers are out-of-date. The ultimate goal is for all judges and clerks to have email and Internet access so information and services can be offered electronically. In addition, Microsoft Office software, which is included on the new machines, will increase efficiency and productivity in Indiana trial courts. Both JTAC's new and used computer offerings are initial attempts to modernize the courts with 21st Century technologies.

If you would like to take advantage of this used computer program, please contact Mary Kronoshek at the Division of State Court Administration; or for more information about used computers or the email/internet initiative, visit the JTAC website at www.IN.gov/judiciary/jtac/programs.html. Although we do not have any computers currently in stock, Ms. Kronoshek will maintain a list of interested individuals.

Ask Jack

Due to space limitation we were unable to feature this section in this newsletter. It will return in the next issue.

Computer Education Opportunities For Trial Court Judges, Clerks & Staff

To help court personnel make better use of the computer and software tools being provided to them, the Judicial Technology and Automation Committee (JTAC) is offering computer education classes.

The Indiana Supreme Court, through the efforts of the Judicial Technology and Automation Committee, has instituted a program to provide computer education to Indiana judges, clerks and their staff. This program is the result of an agreement to Court entered into with Ivy Tech State College, Technical Youth, and E-Train to offer a full range of training options tailored to meet the needs of the user.

The Ivy Tech program is available to any government employee in the state who reports directly to a County Clerk or a judge of a court of record. Many different courses are available, including beginning to advanced training in: Microsoft Office, Internet basics, keyboarding, email, and more. Computer training will be provided at Ivy Tech's 26 different locations for all judicial employees in the state of Indiana. To enroll, contact your nearest Ivy Tech branch, or check the JTAC website for more details and contact information: www.IN.gov/judiciary/jtac/programs.html. The cost of these courses will be borne by the Supreme Court. Thus, it is important that all who register in fact attend the courses

Those who have little or no past experience with computers have another option: Technical Youth. This Indianapolis-based consulting firm provides the services of Indiana college students for one-on-one training in the office of a clerk, judge, or senior judge. To enroll, contact Michael Gutierrez at Technical Youth, 1-800-611-3995; or for more information, visit the JTAC website at www.in.gov/judiciary/jtac/programs.html.

Finally, JTAC recognizes that some potential court employee students will want training over the Internet once they become familiar with the Web. The State of Indiana is developing an online training program called E-train, and court employees will receive further information when this option becomes available.

These arrangements have been made to assist courts and county clerks in taking advantage of the many technology tools available to them currently and in the future. Since the Indiana Supreme Court plans many advances that will require familiarity with computers and the Internet, the Court strongly encourages judges, clerks, and their staff to take advantage of these educational opportunities.

Legal Motions

Legal Motions features personnel changes in the Indiana Judiciary. If you have any news of retirements, resignations, new appointments, or people on the move, we would be happy to feature it.

Appointment of New Judges:

Marion Superior Court--Criminal 10, The Hon. Mae Jimison, effective September 10, 2001.

Marion Superior Court--Criminal 14, The Hon. Mark Stoner, effective September 10, 2001. He replaced The Hon. David Shaheed, who had been serving as Judge Pro Tem.

Wheatfield Town Court, The Hon. Michael Arendas passed away on March 22, 2001.

Pro-Tem:

Howard County Superior 3, The Hon. David Cox, effective 8/

27/2001. He replaces The Hon. Garrett Palmer (Senior Judge).

Marion Superior Court--Criminal 4, The Hon. David Shaheed, effective 8/14, 2001 until September 10, 2001 when he was replaced by The Hon. Mark Stoner.

Porter Superior Court 2, The Hon. Thomas Webber, effective November 25, 2001. He replaces The Hon. Ray Kickbush (Senior Judge).

New Address:

Henry County Circuit Court has moved into the new Henry county Justice Center. Their new address is 1215 Race Street, STE 340, New Castle IN, 47362.

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Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisement, announcement, or particular issue you would like to see in our publication, please contact us.

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This newsletter reports on important administrative matters. For future reference, add it to your Trial Court Administrative Manual.

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